

Service Date: January 15, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Application of)	UTILITY DIVISION
U S WEST Communications, Inc. and)	DOCKET NO. D97.11.226
3 Rivers PCS, Inc. Pursuant to Section)	
252(e) of the Telecommunications Act of)	ORDER NO. 6041
1996 for Approval of their Interconnection)		
Agreement)	

* * * * *

ORDER APPROVING INTERCONNECTION AGREEMENT

Introduction and Procedural Background.

U S WEST Communications, Inc. (U S WEST) and 3 Rivers PCS, Inc. (3 Rivers) negotiated a wireless interconnection agreement, initially filed with the Montana Public Service Commission (Commission) on November 26, 1997.

The Agreement is an adoption of the Agreement between U S WEST and Western Wire-less reached as a result of arbitration. (See In the Matter of Western Wireless Corporation's Petition for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996, of the Rates, Terms, and Conditions of Interconnection with U S WEST Communications, Inc., Docket No. D96.9.150, Order No. 5949b, at 14 (Dec. 27, 1996). The parties also filed an agreement signed by U S WEST and 3 Rivers entitled "Agreement to Adopt Arbitrated Interconnection Agreement". This "Adoption Agreement" provides that the Western Wireless arbitrated agreement may only be adopted in toto.

The Commission issued a Notice of Application for Approval of Interconnection Agreement and Notice of Opportunity to Intervene and Comment on December 3, 1997. This notice established a deadline for intervention of December 12, 1997, and a separate deadline for comments of December 26, 1997. The Commission received no comments and no requests for intervention or hearing.

Findings of Fact and Commission Decision.

1. 3 Rivers, a Commercial Mobile Radio Service (CMRS) provider, will offer PCS communications throughout much of Montana pursuant to its Federal Communications Commission (FCC) radio license. As an incumbent local exchange carrier, U S WEST is required by the Telecommunications Act of 1996 (the Act) to

provide interconnection with CMRS carriers and to establish reciprocal compensation arrangements for the transport and termination of telecommunications. See 47 U.S.C. § 251(b)(5).

2. U S WEST and 3 Rivers executed an Adoption Agreement on October 22, 1997, in which they agreed, inter alia, to adopt the entire interconnection agreement that U S WEST had entered into with Western Wireless Corporation. The Adoption Agreement is not a part of the interconnection agreement submitted to the Commission for approval under the Act and has no bearing or effect on our consideration of the interconnection agreement pursuant to the Act.

3. The Western Wireless Corporation/U S WEST agreement was reached in part through negotiation and in part through arbitration. The 3 Rivers/U S WEST interconnection agreement, although identical to the Western Wireless/U S WEST agreement, must be approved by this Commission prior to implementation.

4. Section 252(e)(4) of the Telecommunications Act of 1996 (1996 Act) provides that a negotiated agreement submitted for this Commission's approval must be approved or rejected within 90 days or it will be deemed approved. Thus, Commission approval or rejection according to the substantive standards set forth in the 1996 Act must issue by February 23, 1998, or the Agreement will be deemed approved. The Commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1).

5. Section 252(e)(2)(A) and •69-3-839, MCA prescribe the grounds for rejection of an agreement reached by negotiation:

(2) GROUNDS FOR REJECTION.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. § 252(a)] if it finds that--

- (i) the agreement (or portio thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;

The standard for approving an agreement reached by negotiation under §252 (e)(2)(A) as set forth above is different than the standard for approving an arbitrated agreement in § 252(e)(2)(B)

of the Act. The Commission reviewed the Western Wireless agreement according to the latter standard, which permits rejection of an arbitrated agreement only when the agreement does not meet the requirements of • 251, the FCC regulations adopted pursuant to § 251, or the pricing standards in § 252(d).

6. The requirements of § 251, however, include a duty on the part of U S WEST to provide interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory. U S WEST has complied with this duty by offering 3 Rivers the same rates, terms and conditions that it offers to Western Wireless as a result of both negotiation and arbitration. Therefore, the nondiscrimination requirement of § 252(e)(2)(A)(i) has been met and the Commission may not reject the agreement on that basis.

7. The Commission's review is thus narrowed to making the determination as to whether the agreement is consistent with the public interest, convenience and necessity, according to § 252(e)(2)(A)(ii) of the Act. In a sense, the standard for approval of an arbitrated agreement is more restrictive than a negotiated agreement such as this one. For example, parties can negotiate an agreement without regard to the standards in § 251(b) and § 251(c), which include obligations for all local exchange carriers and additional obligations of incumbent local exchange carriers, respectively. However, these duties that are required in connection with approval of an arbitrated agreement contain elements which directly affect the public interest. As an example, the requirement to provide number portability according to the FCC's rules not only affects the new competitor by removing a possible barrier to his ability to attract customers, but also the end user customer who may switch providers without having to change his telephone number. See 47 U.S.C. § 251(b)(2).

8. Thus, consistency with the public interest, convenience and necessity is supported by our prior finding in Western Wireless that the identical agreement has met the requirements of § 251, the FCC regulations adopted pursuant to §251 and the pricing standards in § 252(d).

Another indicator of this consistency is the fact that the Commission received no comments in response to the notice issued in this proceeding and no requests for intervention or a hearing.

These two factors, combined with our independent review of the agreement with the public interest, convenience and necessity in mind, support a conclusion that the agreement should be approved.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. 3 Rivers PCS, Inc. provides CMRS communications in Montana. CMRS communications are not regulated by the Commission. Section 69-3-804, MCA.

4. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. See generally, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

6. The Commission has jurisdiction to approve the Wireless Interconnection Agreement negotiated by the parties and submitted to the Commission for approval. Section 69-3-103, MCA.

7. The Commission properly exercises its jurisdiction in approving the negotiated interconnection agreement between 3 Rivers and U S WEST, according to the standards set forth in 47 U.S.C. § 252(e)(2)(A).

8. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the parties' arbitrated agreement by February 23, 1998, or it will be deemed approved.

Order

THEREFORE, based upon the foregoing, it is ORDERED that the Wireless Interconnection Agreement - Montana, voluntarily negotiated by the parties and

submitted to this Commission for approval pursuant to the Telecommunications Act of 1996 is APPROVED.

DONE AND DATED this 12th day of January, 1997, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.